

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PHOENIX PAYMENT SYSTEMS, INC. d/b/a)	
ELECTRONIC PAYMENT EXCHANGE,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 07-537 (***)
)	
LEXCEL, INC. and LEXCEL SOLUTIONS,)	
INC.,)	
)	
Defendants.)	

**PLAINTIFF PHOENIX PAYMENT SYSTEMS’
MOTION TO DISMISS DEFENDANT LEXCEL’S COUNTERCLAIM**

Plaintiff, Phoenix Payment Systems, Inc. d/b/a Electronic Payment Exchange (“EPX”), hereby moves the Court to dismiss Counts I, II and III of defendant Lexcel, Inc.’s (“Lexcel”) Counterclaim. Grounds in support of the Motion are set forth in plaintiff’s Opening Brief filed herewith.

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November 16, 2007
1317402.2

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2007 I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing to:.

C. Barr Flinn
Chad S.C. Stover
YOUNG CONAWAY STARGATT & TAYLOR, LLP

I further certify that I caused to be served copies of the foregoing document on November 16, 2007 upon the following in the manner indicated:

BY ELECTRONIC MAIL

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ORDER

AND NOW, this _____ day of _____, 2007, upon consideration of Plaintiff-Counterdefendant Phoenix Payment Systems, Inc. d/b/a Electronic Payment Exchange's Motion to Dismiss, filed November 16, 2007, and Defendant-Counterclaimant Lexcel, Inc.'s response thereto, IT IS HEREBY ORDERED that the motion is granted. Counts I, II, and III of Defendant-Counterclaimant's Counterclaim are dismissed in their entirety.

United States District Court Judge